



Minutes

Supreme Court's Advisory Committee on the Utah Rules of Appellate Procedure

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114

Via WebEx Videoconference
Thursday, April 1, 2021
12:00 pm to 2:00 pm

PRESENT

Christopher Ballard
Paul C. Burke—Chair
Jacqueline Carlton—
Guest
Lisa Collins
Tyler Green
R. Shawn Gunnarson
Michael Judd—
Recording Secretary
Joanna Landau—Guest

Debra Nelson—Guest
Judge Gregory Orme
Judge Jill Pohlman
Sarah Roberts—Staff
Clark Sabey
Nathalie Skibine
Scarlet Smith
Nick Stiles—Staff
Mary Westby

EXCUSED

Troy Booher—
Emeritus Member
Patrick Burt
Alan Mouritsen
Rodney Parker

1. Welcome, Approval of March 2021 Minutes

Paul C. Burke

Paul Burke welcomed the committee and thanked its members for their attendance. The committee reviewed the March 2021 minutes. Mr. Burke suggested that a missing honorific be added in Section 5, and the committee agreed. Mary Westby suggested that the minutes be amended to clarify the result of the committee's discussion regarding Rules 30 and 31: Rule 30 was passed as amended, while Rule 31 was tabled. The committee agreed that that amendment accurately reflected the committee's treatment of those

rules.

Ms. Westby moved to approve the minutes from the March 2021 meeting, as amended. That motion was seconded and it passed without objection by unanimous consent.

2. **Discussion:** **Paul C. Burke**
 Legislative Update & Appellate Case Management **Judge Jill Pohlman**
 Christopher Ballard

Mr. Burke noted that he had met with members of the Utah Supreme Court to discuss the committee's assignment regarding appellate case management, and the Court asked the committee to move forward with drafting a proposed version of the letter discussed at last month's meeting. The committee will do so.

3. **Action:** **Mary Westby**
 Rule 31

The committee returned to its discussion of Rule 31, which relates to expedited appeals. Ms. Westby proposed that the committee remove the "sua sponte" provision from paragraph (a) as well as paragraphs (c) and (d). The committee also discussed the addition of a new paragraph to address issues related to "stale cases."

Judge Pohlman suggested that it may be rare for an appellate court to issue an "expedited order." Nathalie Skibine also raised questions about how an "expedited order" would affect the certiorari process. Clark Sabey led the committee in a discussion of those potential implications. The committee also discussed the most appropriate terminology for such an order, settling eventually on the term "dispositive order."

After discussion raised several concerns about the implications of the proposed rules changes, Ms. Westby moved to remove draft "dispositive order" provision. That motion was seconded and it passed without objection by unanimous consent.

The remainder of the committee's discussion of Rule 31 was directed to clean-up and simplification. Christopher Ballard offered comments regarding subpart (a), which bears the title "Motion and stipulation," but says nothing about a stipulation. After noting that stipulations between the

parties were already addressed in subpart (b)(1), Mr. Ballard recommended that the option to stipulate to an expedited decision appear in its own subpart. Mr. Ballard also recommended that the words “and stipulation” be stricken from the title language of subpart 31(a). The committee also recommended that subpart 31(a) refer to an “expedited decision” rather than an “expedited hearing,” and that the lead title for the rule be simply “Expedited Decisions.” The committee retitled subpart 31(c), “Procedure for expedited decision.”

Following those changes, Judge Pohlman moved to adopt, and Mr. Ballard seconded that motion. The motion passed without objection by unanimous consent.

Mr. Burke suggested that the committee present the draft rule and the planned draft letter together for Supreme Court’s consideration.

4. Action: Sarah Roberts
Rules 23, 27, 56

Sarah Roberts introduced the proposed amendments. Those amendments relate to the committee’s project to combine form requirements into a single rule, by incorporating Standing Order 11 and moving form-related requirements to one place. After discussion about timing, the committee agreed to change the time requirement in subpart 23(c) back to “5 days” until large-scale timing rules are changed.

With that change made, Ms. Westby moved to approve Rule 23. Judge Pohlman seconded, and it passed without objection by unanimous consent.

The committee discussed the proper terminology for cover and caption pages in the context of Rule 27(c), then moved to a discussion of binding. The committee also discussed striking line 85 on to conform to existing practice.

After that brief discussion, Tyler Green moved to approve Rule 27 as amended and as reflected on-screen at the committee’s meeting. Lisa Collins seconded that motion and it passed without objection by unanimous consent.

After brief discussion to confirm agreement to the proposed changes, Ms. Westby moved to approve Rule 56 as it appeared on-screen. Judge Pohlman seconded and it, too, passed without objection by unanimous consent.

Near the close of the meeting, Ms. Collins noted a possible concern regarding the “postmark date” provision contained in the rules, and given the lack of time to discuss that concern in detail, suggested that she follow up on that concern by email.

5. **Action:**
Rule 11

Debra Nelson
Joanna Landau
Judge Pohlman

Debra Nelson and Joanna Landau joined the committee to discuss the problem of transcript costs, as it relates to indigent defense. Ms. Nelson and Ms. Landau explained that the indigent-defense office needs time to review and evaluate cases before ordering often-expensive transcripts. The committee understands that the Supreme Court has been informed of the proposed changes and approves of them. Ms. Collins reminded the committee of one implication of the proposed change: the additional length of time tacked on to any affected cases. Ms. Nelson suggested that the proposed changes would not apply to all cases, and that even when extra time to consider transcript orders is extended, it will not always be used.

The committee also discussed subpart 11(e), as it relates to issues regarding the record on appeal. The committee noted that a record full of contradictory statements is of little use to the appellate court, and that amendments to the rule need to be sensitive to that concern. The committee also discussed Rule 11(f), addressing the rule's unusual language in an effort to clarify its meaning.

Following that discussion, Judge Orme moved to table the proposed amendments to allow for more time to consider full scope of changes. Judge Pohlman seconded that motion and it passed without objection by unanimous consent.

6. **Action:**
Rule 12

Judge Pohlman
Sarah Roberts

Given that the committee did not have time to discuss Rule 12 in meaningful detail, the committee elected to defer that discussion until a future meeting.

7. **Discussion:**
Old / New Business

Paul C. Burke

None.

8. Adjourn

The committee adjourned its April 2021 meeting and will meet again on May 6, 2021.